IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Raj Kumar Soni Vs. State of Rajasthan
(D.B. Criminal Appeal No.897/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 20-5-2002 in Sessions Case No.14/2001 passed by Shri Anil Kumar Mishra, RHJS, Additional Sessions Judge No.1, Jaipur City Jaipur.

Date of Judgment: May 25, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Biri Singh Sinsinwar, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Raj Kumar Soni, the appellant herein, was put to trial before the learned Additional Sessions Judge No.1 Jaipur City Jaipur, who vide judgment dated May 20, 2002 convicted and sentenced the appellant as under:-

U/s.302 IPC:
To suffer imprisonment for life and fine of Rs.2000/-, in default to further suffer rigorous imprisonment for six months.

U/s.324 IPC:
To suffer simple imprisonment for one year.

Substantive sentences were ordered to run concurrently.

2. On March 25, 2001 at 10.30 PM informant Babu Lal Soni (Pw.6) handed out a written report (Ex.P-9) at SMS Hospital Jaipur to SHO Police Station Murlipura Jaipur to the effect that he was residing with his family as a tenant in house No.93 Vikas Nagar Jaipur. Raj Kumar Soni (appellant) was also residing in the said house along with his family. Raj Kumar Soni used to quarrel with his wife after consuming liquor. Around 7.30 PM when the informant came out of Puja room along with his wife and children he found Raj Kumar Soni hurling abuses. He was under the effect of intoxication. The informant and his wife when asked Raj Kumar not to cross the limit he took out the knife from the pocket and inflicted injuries on the chest of his wife. Knife injuries were also caused by him on the person of informant. Raj Kumar Soni fled away and police took the informant and his wife to the hospital where his wife Champa Devi was declared dead. On that report a case under sections 307 and 302 IPC was registered and investigation commenced. Necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No.1, Jaipur City Jaipur. Charges under sections 307 and 302 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 23 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence and examined three witnesses in defence. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Having scanned the material on record with the assistance of learned counsel for the appellant and learned Public Prosecutor, we notice that the death of Champa Devi was homicidal in nature. As per Post Mortem

Report (Ex.P-15) following ante mortem injuries were found on the dead body:-

1. Incised wound 2 x ½cm x muscle deep with clotted blood placed transverse & obliquely on palmer aspect of Rt. Middle finger at middle phalanx margins of the wound are clean cut & regular.
2. Stab (Incised) wound 3 x 1cm x chest cavity deep with clotted blood transversely & slight obliquely on Lt. side front of chest at Lt. border of sternum just lateral to sternal angle and it is 1.5 cm below medial end of lt. clavicle wound is wedge shaped.

In the opinion of Dr. P. C. Vyas (Pw.17) the cause of death was shock due to injury to Lt. lung & Aorta with excessive haemorrhage.

4. As per injury report (Ex.P-17) Babu Lal sustained injuries thus:-

1. Post operation bandage with drainage tube Lt. side anterior lateral of abdomen.
2. Incised wound 4cm x ½cm x muscle deep placed at Rt. side scapular region at anteriorly with fresh bleeding the wound margin on left clean cut
3. Two incised wound of 4 x ½cm x muscle deep place at. Arota u/s at ankle laterally with gap of 6cm
4. Multiple incised wound of size vary 5 x ½ cm to 3 x ½ x muscle deep mark at thumb lt. index & middle finger palm arm aspect.

5. It also appears that shows that Saroj wife of appellant Raj Kumar Soni also received one incised wound with sharp margin tailing a dry brownish 1 x ½ x ¼ on palmer aspect of left index finger as per injury report Ex.D-6.

6. We have closely scrutinised the testimony of Babu Lal (Pw.6)

who was examined by the prosecution as injured eye witness. It appears to us a case of fight during a drunken brawl. In this view of the matter there appears to be no intention of murder. The occurrence took place without pre-meditation in a sudden fight and in the heat of passion. There was no enmity between the appellant and the deceased. The prosecution did not explain as to in what manner Saroj, wife of appellant, sustained incised wound. It thus appears that some thing which has not completely unravelled might have sparked off the incident.

7. On analysing the evidence adduced at the trial by the yardstick of probabilities, its intrinsic worth and animus of witnesses we find that the prosecution is only able to establish beyond reasonable doubt that appellant Raj Kumar armed with knife scuffled with Babu Lal and during the course of incident when the deceased tried to intervene she received blows with knife at her chest and finger. At best the case can be one where appellant Raj Kumar might be said to have caused a bodily injury as is likely to cause death. Therefore, there is every justification to alter the conviction recorded under section 302 into one Section 304 Part I IPC. On the facts and circumstances of the case, the imposition of 10 years rigorous imprisonment and fine would sufficiently meet the requirements of justice and to this extent the judgment of the court below shall stand altered and modified.

8. For these reasons, we partly allow the appeal and instead of section 302, we convict the appellant under section 304 part I IPC and sentence him to suffer rigorous imprisonment for ten years and fine of Rs.5000/-, in default to further suffer six months rigorous imprisonment. We however maintain his conviction and sentence under section 324 IPC.

The impugned judgment of learned trial court stands modified as

indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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